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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GOOK YOUNG LEE and JEONG OK CHOE

Appeal 2010-000892
Application 10/599,606
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-3, 6-7, 10-11, and 17-18 which are all the claims pending in the application[1]. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM-IN-PART.

THE INVENTION

The Appellants' claimed invention is directed to a method for generating a list of search results of goods in response to a search request. (Spec.1:5-8). Claim 1, reproduced below with the numbering in brackets added, is representative of the subject matter on appeal.

> 1. A computer-implemented method for generating a list of search results of goods in response to a search request for goods of a searcher and providing the searcher with goods information, the method comprising the steps of:
>
> maintaining and storing a goods information database in at least one memory, the goods information database for storing at least one search listing, the search listing including seller identification information and selling price information;
>
> receiving a search request for goods from a searcher;
>
> providing a search result list of the goods in response to the search request for the goods, the search result list of the goods including the search listings;

[1] The Appellants have indicated that claim 16 has been cancelled (Appeal Br. 5, 41).

[1] providing an Internet link to a seller of goods associated with one of the provided search listings so that the searcher can purchase the goods at the seller's website;

[2] detecting a click-through to the Internet link by the searcher;

in response to the detected click-through, generating and storing selling price information by referring to selling price information included in the search listing selected by the searcher;
and

[3] generating advertising costs, irrespective of purchase of the goods at the seller's website, for each seller for a first predetermined period based, at least in part, upon click-through information, a predetermined selling commission rate and the stored selling price information,

[4] wherein the steps of detecting a click-through and generating advertising costs are performed by a server that comprises a processor and said at least one memory.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Cheung	US 7,043,471 B2	May 9, 2006
Cassidy	US 7,107,226 B1	Sep. 12, 2006

The following rejections are before us for review:

1. Claims 1-3, 6-7, 10-11, and 17-18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cassidy and Cheung.

THE ISSUES

With regards to claim 1 the issue turns on whether it would have been obvious to combine Cassidy and Cheung to meet claim limitations [1] and [3]. Claims 2-3, 6-7, 10, and 17-18 turn on the same issue. With regard to

claim 11 the issue turns on whether it would have been obvious to modify the prior art to obtain the argued claim limitation.

FINDINGS OF FACT

We find the following findings of fact are supported at least by a preponderance of the evidence:[2] We adopt the Examiners findings of facts found in the Answer at 3:17-27 and 4:3-14. Additional facts may appear in the Analysis section below.

ANALYSIS

The Appellants argue that the rejection of claim 1 is improper because Cassidy only teaches receiving a commission charge for vendors for the sale of products and not for the "advertising service" and that Cheung only teaches a cost per click accounting method (Br. 25). The Appellants further argue that combination of Cassidy and Cheung fails to disclose claim limitation [3] (Br. 25). The Appellants reiterate these arguments in the Reply Brief at 5-11.

In contrast, the Examiner has determined that the rejection of record of is proper (Ans. 3-5 and 18-28).

We agree with the Examiner. Initially, the Appellants argue that elements of claim limitation [1] using Internet links to allow the searcher to make purchases at the seller's website are not shown by Cassidy (Br. 25-30). Cassidy however does disclose an embodiment providing hyperlinks to the vendor's home page in a shopping forum and being compensated for this

[2] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

(Col. 9:49-60) so this argument is not taken. Cassidy also discloses the use of a vendor paying a commission percentage to the online operator based on the sales of the vendor's wares (Col. 7:25-35). Cheung at Col. 23:36-49 discloses that clicks on a search listing by a software counting mechanism is well known in the art.

Here, Cassidy provides an embodiment of a shopping forum that provided hyperlinks to a vendor's home page and also discloses that the commission rate to be based on the sale price. The modification of these disclosures of Cassidy to also include in the advertising commission rate conventional click-through information as taught by Cheung would have been an obvious, predictable combination of familiar elements to increase revenue. For these reasons the rejection of claim 1 is sustained. The Appellants have not provided separate arguments for claims 2-3, 6-7, 10, and 17-18 and the rejection of these claims is sustained for the same above reasons.

Claim 11 includes a specific limitation drawn to the manner in which the selling commission rate is calculated and the Appellants argue the prior art does not show or suggest this (Br. 34-36). Specifically, claim 11 requires in part:

> "wherein the selling commission rate is determined to be the applied exemplary selling commission rate when the total amount of the advertising costs of selling price with respect to the plurality of sellers during the predetermined period is nearest to the total amount of the cost per-click information with respect to the plurality of sellers during the predetermined period." (Portion of claim 11).

In contrast, the Examiner has determined that the rejection of claim 11 is proper and that the above cited claim limitation from claim 11 would be

obvious in light of Cheung's disclosure at Col. 23:36-45 (Ans. 9-10 and 28-32).

We agree with Appellants. Cheung at Col. 23:36-45 does disclose that clicks on a search listing by a software counting mechanism is well known in the art but there is no articulated reasoning with rational underpinnings to modify the commission rated to be modified in the specific manner as recited in the cited claim limitation. The cited portion of Cheung contains no references to the "total amount of the advertising costs of selling price with respect to a plurality of sellers during a predetermined period" or "nearest to the total amount of the cost-per-click" as claimed and there is no articulated reasoning with rational underpinnings to support such a modification as being obvious. For this reason, the rejection of claim 11 is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-3, 6-7, 10 and 17-18 under 35 U.S.C. § 103(a) as unpatentable over Cassidy and Cheung.

We conclude that Appellants have shown that the Examiner erred in rejecting claim 11 under 35 U.S.C. § 103(a) as unpatentable over Cassidy and Cheung.

DECISION

The Examiner's rejection of claims 1-3, 6-7, 10 and 17-18 is sustained. The Examiner's rejection of claim 11 is not sustained.

AFFIRMED-IN-PART

JRG